

Kevin Gunn P-78814  
 Pro-Persona  
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FILING FEE PAID	
Yes	No
HYP MOTION FILED	
Yes	No
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<b>FILED</b>
MAY 27 2008
CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY <i>KM</i> DEPUTY

United States District Court  
 Southern District of California

Kevin Gunn  
 Pro-Persona

Petitioner

V.

J. F. Salazar  
 Warden

Respondent

and

Jerry Brown  
 Attorney General  
 Additional Respondent

Motion for  
 Appointment of  
 Counsel

'08 CV 0972 LAB WMC  
 Civil NO.

To the Honorable Magistrate Judge, Please  
 take notice that under the Criminal Justice Act, 18 U.S.C.  
 Section 3006 (A) 1994. Counsel may be appointed to  
 represent Prisoners in Federal habeas Corpus Procedures. It has  
 been observed by Practitioners that legal assistance at  
 this early stage is often critical to enable Prisoners  
 with little knowledge of the law to recognize  
 meritorious claims, draft the Petition Properly, and

(1)

1 File the necessary documents with the Petition.  
 2 Pre-filing representation may be particularly important  
 3 because "a Prisoner applying for federal habeas  
 4 Corpus relief in federal Court must assert all  
 5 possible violations of his Constitutional rights in his  
 6 initial application or run the risk of losing what  
 7 might be a viable claim." Brown vs. Vasquez,  
 8 952 F.2d 1164, 1165 (9th Cir.) Cert denied, 503 U.S.  
 9 1011 (1992) (decision's holding limited to capital cases)  
 10 Furthermore, "the services of investigators and other  
 11 experts may be critical in the pre-application phase  
 12 of a habeas Corpus Proceeding, when possible claims,  
 13 and the factual bases are researched and identified."  
 14 McFarland vs. Scott, 512 U.S. 849 (1994) (decision's  
 15 holding limited to capital cases).

16 Rule 8(c) of the Habeas Rules gives district  
 17 Judges the discretion to order the employment  
 18 of Counsel under the Criminal Justice Act at  
 19 any stage of the case if the interest of  
 20 Justice so requires.

21 Both state and federal government have  
 22 recognized the importance of Counsel to assist  
 23 Prisoners with legal challenges. The U.S. Supreme  
 24 Court has held that Prisoners have a Constitutional  
 25 right to "meaningful access" to the courts to  
 26 challenge their convictions. Bounds vs Smith, 430  
 27 U.S. 817, 825 (1977). The Due Process Clause of the

(2)



1 14th Amendment has been interpreted that no person  
2 will be denied the opportunity to present to the  
3 courts allegations concerning violations of  
4 "fundamental constitutional rights." WOLF vs. McDonnell,  
5 418 U.S. 539, 579 (1974). Some courts have recognized  
6 that meaningful access to the courts requires  
7 the assistance of an attorney. McFarland vs. Scott,  
8 512 U.S. 849, 855-56 (1994).

9 "Meaningful access" requires the  
10 appointment of counsel in order to investigate and  
11 research complex factual and legal claims, review  
12 the record for legal errors and draft appropriate  
13 legal pleadings. See McFarland vs. Scott, Supra  
14 at 856 858 ("right to [habeas corpus] counsel  
15 necessarily includes a right for counsel  
16 meaningfully to research and present a defendant's  
17 habeas claims") By analogy, no one would contend  
18 that "meaningful access" to medical care is complete  
19 when one enters the reception room of the  
20 of the doctor's office without one-on-one  
21 consultation with the doctor. nothing "meaningful"  
22 has happened. Likewise, giving an untrained  
23 prisoner the opportunity to file un-researched,  
24 incomplete, legally-flawed legal pleadings leaves  
25 much to be desired in terms of "reasonable  
26 access" to the courts.

27


(3)



Petitioner is in custody in violation of the 5th 6th 8th and 14th Amendments of the United States Constitution which rendered his trial fundamentally unfair and resulted in a miscarriage of Justice. The issues concern substantial and complex Procedural, legal and mixed legal and factual questions as well as effective assistance of Counsel. Petitioner is indigent and in no position to investigate crucial facts. Moelin vs. Erekke, 650 F.2d at 887, and factually complex issues that involve "conflicting testimony," Petitioner has colorable claims but lacks the capacity to present it. Gordon vs. Leake, 574 F.2d 1147 (4th Cir.) cert. denied, 439 U.S. 970 (1978), and he has at least one strong legal claim. Hahn vs. McLe, 737 F.2d 771 (8 Cir. 1984)

Without Counsel Petitioner will be effectively denied "meaningful access" to the courts and his Constitutional right to bring a habeas corpus challenge has been "suspended."

Wherefore, Petitioner requests that this Court appoints Counsel to represent him.

  
 Kevin Gunn P-78894  
 Pro-Persona  
 Date: \_\_\_\_\_

(4)